

STAFF STUDY

Noncompetitive Interchange of CIA Employees Into Competitive Service

1. Purpose: To present an administrative rationale for seeking an Executive Order which would authorize the noncompetitive appointment of present and former CIA employees in the competitive service in any Federal agency with the acquisition of status to be based upon CIA tenure.
2. Background: The CIA is an "excepted" agency--exempted from the Civil Service rules concerning appointments, promotions, reassignments and related personnel processes. Prior to 1953, the US Civil Service Commission, itself, had exempted by blanketing all of CIA's positions under Schedule A due to the sensitive nature of the Agency's missions. Once committed, the CSC permitted CIA positions to remain in this "excepted" category. However, in 1953 the Agency decided that its legislation contained sufficient authority for continued Agency exemption and that it should use its own statutory provisions as the basis for approving personnel actions outside of the competitive Civil Service system. The CSC accepted the Agency's interpretation of Section 8(a)(1) of the CIA Act of 1949 to the effect that this provision did grant CIA a statutory exemption from the competitive Civil Service system.

Today one finds only a small number of exempted agencies--AEC, TVA, Panama Canal Company, Foreign Service, CIA, NSA, etc. Or stated another way, 95% of all Federal positions are in the competitive Civil Service.

Under the aegis of Mr. John Macy, in 1964 the Civil Service Commission pronounced a Federal Personnel policy for competitive service agencies to the effect that the Federal Government was, in effect, a single employer and also a single Career Service. Three developments have emerged from this policy.

(a) One has been to encourage the "excepted" agencies to seek Personnel Interchange Agreements from the CSC and thereby encourage movement between systems. With the Department of State, the CSC undertook the whole project for State and even arranged for an Executive Order granting interchange privileges when it was found that State could not comply with some competitive service legislative requirements and from which the CSC itself did not have authority to waive. (State personnel recently reported that the Department "got everything and lost nothing" under this E.O.) Although State does not maintain statistics on external personnel movements, the Department has been able to transfer out a number of FSO's and FSS's into competitive service agencies and other than clerical applicants, very few competitive service careerists have applied to State. Those that do apply must meet State's qualifications, security and medical standards and are then considered along with other candidates. State's "token" interchange commitment involved accepting the completion of 4 years of competitive service as being equivalent to its 30 months probationary period for FSS appointees.

(b) The second pertains to steps taken by the CSC to strengthening the calibre of employees serving in Federal positions. Under a recent augmentation of the Federal Merit Promotion Program, there must be at

least 3 well-qualified candidates in competition for each position vacancy (or promotion). In some cases, Agencies are finding that they must seek well-qualified candidates from outside of their organizations. Thus, in effect, those Federal employees who have competitive status (or are entitled to it) may have more opportunities for advancement open to them through this broadening of competitive areas.

(c) The third development involves a practical application of the "one" Federal Career Service concept which will have considerable impact on Agency employees seeking other Federal employment in the near future. As a result of the drastic personnel "cuts" in Defense, the CSC recently agreed to place the names of any displaced career employee's name at the top of any and all examination registers for which the individual would qualify. While the affected employee must take the initiative and make application himself, once his name is entered on the register, he must be appointed before any other examination candidate can be certified. This procedure will definitely cause a greater blockade of the use of CS registers by Agency employees during the next two years.

3. Discussion: The Agency is facing a period in which it may well find itself having to surplus a number of employees. Agency external placement counseling experience has indicated that undoubtedly some of these surplus employees will wish to seek other Federal employment, especially if the individual has 12 or more years under the Civil Service Retirement System.

The CSC competitive examination procedure is, and has been, the only means available to Agency employees to secure other Federal employment. In addition to this procedure being a long-drawn out process, it does not afford any recognition of tenure in an excepted agency; is required to grant preferences to both disabled and war-time veterans; and, finally, the examinations (with few exceptions) are geared for evaluating candidates for junior professional (and clerical) entry level employment.

In any "surplusing" action, a question of prime importance (to those affected) will be the equality of treatment that the Agency gives to each officer being surplusd. If one were to analyze those "surplusd" officers interested in other Federal employment one would find two groups--those who "have" competitive Civil Service status, and the remainder who "have not." While it is true that the acquisition and possession of competitive Civil Service status has no significance for an Agency employee as long as he is employed by the Agency; it takes on great importance to the officer who must leave the Agency and wishes to enter some other Federal position which is in the competitive service. For those who acquired competitive status before coming with the Agency as well as those overt employees who acquired it while with the Agency their departures to other Federal agencies will be facilitated. However, security and cover considerations did not permit employees in the Clandestine Service the same degree of freedom in filing for Civil Service examinations and acquiring competitive status while in an Agency position. This disparity

of treatment of Clandestine Service employees (and other covert types) grew so critical, at least in the minds of those adversely affected, that the Agency did indeed stop the practice of requesting CSC name certifications of overt employees. In order to avoid again rehashing this equality of treatment problem (unhappy employees do have uniquely long memories), a singular solution would be for the Agency to seek an Executive Order authorizing the noncompetitive appointment of all current and former CIA employees in the competitive Civil Service.

This Executive Order would:

- a. Authorize the noncompetitive (sans examination) appointment of CIA employees in the competitive service;
- b. Would follow a simple transfer procedure; and
- c. Would recognize CIA tenure by type of career or career-conditional appointment made.

With an Agency "personnel surplusing" action in the offing, the Agency should recognize that it is sound management to explore, secure, and implement all reasonable procedures that would be of benefit both to the Agency and those officers being surplus. At this juncture, it would seem immaterial whether any of the Agency surplus officers secure other Federal employment (under this E.O.); what will be of considerable significance (to the morale of all employees) would be to find that the Agency had, in a timely fashion, sought and secured this arrangement.

Proposal: It should be proposed to the Executive Director-Comptroller that the Agency should seek an Executive Order which would authorize the noncompetitive appointment of current and former CIA employees into

the competitive service in any Federal agency with the acquisition of status to be based upon CIA tenure. The merits of this proposal for an E.O. should rest on the fact that while CIA has a merit system comparable to those found elsewhere in the excepted service as well as in the competitive service, the sensitive nature of its mission prevents full compliance to such legal restraints as veterans preference, etc. On the other hand, this Agency does have a reservoir of talented and skilled manpower which can be made available to other Federal programs if a reasonable method of entry is available.